IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8771 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos 1, 3 to 5 No
No 2 Yes

HARIJAN MAGANBHAI CHATURBHAI

Versus

DISTRICT MAGISTRATE

Appearance:
MS DR KACHHAVAH for Petitioner
MR.JC GOHIL, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 03/02/99

ORAL JUDGEMENT

The petitioner in this writ petition under Article 226 of the Constitution of India has prayed for a writ of certiorari for quashing the detention order dated 23.6.1998 passed by the District Magistrate, Surendranagar under section 2(c) of the Prevention of Antisocial Activities Act (for short 'PASA') and for a

writ of habeas corpus for immediate release of the petitioner from illegal detention.

It appears from the grounds of detention as contained in Annexure "B" that the Detaining Authority considered the five registered cases under various sections of the IPC which are pending trial before the competent Court and also considered the statements of the nine confidential witnesses and from the aforesaid material he arrived at subjective satisfaction that the petitioner is dangerous person within the meaning of section 2(c) of the PASA. Accordingly, the impugned order of detention was passed which is under challenge in this writ petition only on two grounds.

The first ground of attack is that the provisions of Article 22(5) of the Constitution of India have been violated in as much as the Detaining Authority in the grounds of detention has not claimed any privilege under section 9(2) of the PASA. The learned Counsel for the petitioner contended that since this privilege was not claimed by the Detaining Authority in the grounds of detention, he was duty bound to disclose the names and addresses of the nine confidential witnesses and was also duty bound to supply the entire statements of the confidential witnesses and since this was not done, safeguard provided under Article 22(5) of the Constitution of India were violated on account of which the detention and continued detention of the petitioner has been rendered illegal.

The learned Assistant Government Pleader on the other hand contended that the privilege was claimed by the Detaining Authority for which he has made reference to paras 4 and 13 of the counter affidavit. The point for consideration at this stage is what is requirement of Article 22(5) of the Constitution of India. There are two basic requirements of this Article when a person is preventively detained. The first requirement is that the person detained must be made known as soon as possible of the grounds of detention and the second mandatory requirement is that the Detaining Authority must afford at the earliest opportunity of hearing which includes opportunity of making reprsentation. These are constitutional mandates which are not discretionary, rather, these constitutional mandates have to be strictly observed. In case of nonobservance of these mandates the detention order cannot be sustained.

If the constitutional requirement is to supply to the detenu at the earliest the grounds of detention, it

means not only the said grounds of detention but also the material upon which the grounds of detention were formulated. It further mean that all the documents upon which the grounds of detention were formulated must be supplied. Since the Detaining Authority in the instant case has placed reliance upon the statements of the nine confidential witnesses, it is to be seen whether he was required to supply copies of statements of those witnesses to the petitioner or not. If those statements were relied upon by the Detaining Authority he was duty bound to disclose the names and addrsses of the witnesses and also to supply the copies of those statements. Ofcourse exception is that if in public interest, disclosure of names and addresses of the witnesses was not advisable the Detaining Authority could have claimed privilege under section 9(2) of the PASA.

Another point for consideration at this stage is what is the stage at which such privilege can be claimed by the Detaining Authority. In my opinion, the Detaining Authority has to claim this privilege in the grounds of detention enabling the detenu to know that on account of claim of privilege under section 9(2) of the PASA he is not being supplied copies of the statments of confidential witnesses nor is he being supplied the names and addresses of the confidential witnesses. It is not the choice of the Detaining Authority to supplement this vital defect in the grounds of detention at a late stage by filing counter affidavit. Apparently, at the earliest opportunity, in the grounds of detention the privilege was not claimed by the Detaining Authority. There is no mention of claim of privilege under section 9(2) of the PASA in the grounds of detention either expressly or impliedly. Hence, by filing counter affidavit the defect can not be supplemented and as such depositions in paras 4 and 13 of the counter affidavit are of no avail to the respondents.

In view of the aforesaid discussions, it is manifest that the requisite material which was relied upon and referred by the Detaining Authority in the grounds of detention was not supplied to the petitioner, as a result of which he was prevented from making effective reply and representation in his defence. This has certainly violated the provisions of Article 22(5) of the Constitution of India and as a result of this breach the detention and continued detention of the petitioner has been rendered illegal.

The next point pressed by the learned Counsel for the petitioner has been that the activities of the

petitioner can not be said to be prejudicial for maintenance of public order. She has not challenged the declaration of the Detaining Authority that the petitioner is dangerous person nor she could successfully challenge the subjective satisfaction of the detaining authority for the obvious reason that five cases under various sections of the IPC punishable under Chapter XVI and XVII of the IPC were registered against the petitioner. In addition to these cases, seven confidential witnesses also furnished some material to indicate that the petitioner was habitual and was habitually repeating and committing various offences punishable under the aforesaid Chapters of the IPC. Consequently, the petitioner was rightly described and declared as dangerous person within the meaning of section 2(c) of PASA.

From the statements of the confidential witnesses it appears that the petitioner was in the habit of extorting money, teasing girls and women. He is not engaged in any work or business. That may give an indication that the petitioner is very bad man or is criminal who is indulging and is repeating his criminal activities. For this reason alone the petitioner could not be preventively detained.

Before passing the order for preventive detention the Detaining Authority should have considered whether the repeated criminal activities of the petitioner were prejudicial for maintenance of public order. Every criminal activity of a criminal affects the law and order and not necessarily public order. The public order can be said to have been disturbed by a particular criminal activity of a person or criminal when even tempo of the life of the locality or community is disturbed or public peace and tranquillity in the locality or community is disturbed. Concept of public order is not confined between two individuals. There may be incidents where the incident may occur between two individuals but the incident should be such which is likely to affect the maintenance of public order and it is further likely to affect the public in general or a portion of public in particular locality. If only two or three persons are affected by the incidents it cannot be said that public order has been disturbed. If in this background the statements of the nine confidential witnesses are scrutinised an easy inference can be drawn that in those nine incidents public order was not at all disturbed nor is there any mention in the grounds of detention that on

these occasions public order was disturbed. From these incidents a signal may be given that the petitioner is hardened criminal but that does not mean that on every occasion or on any occasion his activity disturbed the maintenance of public order. If this is so then the impugned order of detention cannot be sustained because the basic requirement of activities being prejudicial for maintenance of public order is lacking in the instant case. The impugned order has therefore become illegal for the aforesaid two reasons. The writ petition therefore succeeds and is hereby allowed. The impugned order of detention dated 23.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt